

GAHC010147052024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3733/2024

SAMIRAN CH DAS
S/O- LATE SUBDH CH. DAS,
VILLAGE- LALAPUR PART-I,
P.O.- CHANDRAPUR, P.S.- LALA,
DISTRICT- HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
P.H.E. DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE CHIEF ENGINEER
P.H.E. DEPARTMENT
HENGRABARI
ASSAM.

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 781029.

5:THE EXECUTIVE ENGINEER
HAILAKANDI DIVISION
ASSAM.

6:TREASURY OFFICER

HAILAKANDI
ASSAM

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner : Shri A.M. Barbhuiya, Advocate

Advocates for the respondents : Shri I. Borthakur, SC, PHE,
Shri R. Borpujari, SC, Finance Department
Shri C. Baruah, SC, AG, Assam.

Date of hearing : 31.07.2024

Date of judgment : 31.07.2024

Heard Shri A.M. Barbhuiya, learned counsel for the petitioner. Also heard Shri I. Borthakur, learned Standing Counsel, PHE, Shsri R. Bosrpujari, learned Standing Counsel, Finance Department and Shri C. Baruah, learned Standing Counsel, AG, Assam.

2. Considering the subject matter, the writ petition is taken up for disposal at the motion stage itself.

3. The claim in this writ petition is for grant of regular pension to the petitioner.

4. As per the facts projected, the petitioner was working in the PHE Department as a Work Charge (Khalasi) from 10.09.1984. Thereafter, vide an

order dated 31.10.1987, he was promoted to the post of W/C Pump Operator and was posted in the Hailakandi Town Water Supply Scheme. The petitioner had retired from service on attaining the age of superannuation on 01.06.2021. The petitioner's grievance, as reflected above is towards release of his pensionary benefits.

5. Shri Barbhuiya, the learned counsel for the petitioner has submitted that after his retirement, lump sum gratuity has also been paid to him. He submits that the petitioner having served for a long period of time since his initial date of appointment, the pension should be granted to him.

6. By drawing the attention of this Court to Rule 31 of the Assam Services (Pension) Rule 1969, the learned counsel has submitted that the said provision is not restricted only for regular appointee and can be extended also for Work Charged employee. It is submitted that in a similarly situated case pertaining to the same Department, there is a direction of this Court dated 20.06.2024 passed in WP(C)/6582/2023 for consideration of the case of the petitioner in that case. The learned counsel has also relied upon the decision of the Hon'ble Supreme Court in the case of ***State of Gujarat vs. Talsibhai Dhanjibhai Patel*** reported in ***2022 SCC Online SC 2004*** wherein length of service was considered for payment of pensionary benefits.

7. *Per contra*, Shri Borthakur, the learned Standing Counsel of the Department has submitted that a claim for pension is conditional upon the fact as to whether the incumbent was a regular employee. In the instant case, it is not in dispute that all along the petitioner was on Work Charged basis and had retired in the same capacity. It is submitted that in absence of any order of regularisation, grant of pension is not permissible in law. As regards, the applicability of Rule 31 of the Pension Rules, 1969, it is submitted that the

employment must be substantive and permanent and Work Charged engagement cannot be held to be a substantive and permanent employment.

8. With regard to the earlier order of this Court passed in WP(C)/6582/2023, it is submitted that there was no Mandamus as such and only on certain instance where pension were granted to some employees, the respondents were given liberty to consider the case of the petitioners.

9. The learned counsel has also referred to the decisions of the **Secretary, State of Karnataka and Ors. vs. Umadevi (3) and Ors.**, reported in **(2006) 4 SCC 1** wherein the Hon'ble Supreme Court has laid down the conditions which are required for regularising the services and those conditions are not fulfilled by the petitioner in the instant case.

10. He has also submitted that the issue has been settled by the Hon'ble Division Bench in the case of **State of Assam vs. Upen Das** reported in **2017 4 GLR 493** wherein the claim for regularisation have been negated with.

11. The learned counsel has also relied upon a judgment of the Hon'ble Supreme Court dated 28.04.2023 in a case of **Uday Pratap Thakur & Anr. Vs. the State of Bihar & Ors.** in which the claim for pension has been negated as the employees therein were Work Charged employees and were not appointed in a substantive post.

12. Shri Borpujari, the learned Standing Counsel, Finance Department and Shri Baruah, the learned Standing Counsel, AG, Assam while endorsing the views expressed on behalf of the Administrative Department has submitted that a claim for pension by a Work Charged employee is not maintainable.

13. The rival submissions have been duly considered.

14. The petitioner has relied upon Rule 31 of the Pension Rules of 1969 which

is extracted herein below:

“31. Conditions to qualifying service. The service of an officer does not qualify for pension unless it conforms to the following three conditions:

Firstly, the service must be under Government;

Secondly, the employment must be substantive and permanent;

Thirdly, the servant must be paid by Government.

Provided that the Governor may, even though either or both of conditions (1) and (2) above are not fulfilled, -

(i) declare that any specified kind of service rendered in non-Gazetted capacity shall qualify for pension, and

(ii) in individual cases and subject to such conditions as he may think fit to impose in each case allow service rendered by an officer to count for pension.”

15. Out of the three essential conditions to qualify oneself for pension, it is provided that the employment must be substantive and permanent. A Work Charged engagement cannot be held to be a permanent and substantive employment and therefore, reliance upon Rule 31 is misplaced. The question therefore arises as to whether by mere length of the service rendered, an incumbent would be entitled to pension. The aforesaid issue has been conclusively settled by the Hon'ble Division Bench in the case of **Upen Das** (supra), the relevant observation being extracted herein below:

“22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken for welfare

measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not i n sanctioned post) with effect from 1.8.2017.”

16. The learned Standing counsel of the Department has also submitted a recent order passed by this Court on 23.07.2024 in WP(C)/5820/2021 (**Joy Narayan Sarma and Anr vs. The State of Assam and Ors.**). It is submitted that even in the said case, instances were relied upon wherein benefits of regularisation were given to similarly situated persons. However this Court had observed that those orders of regularisation does not appear to be in accordance with law. In the instant case, apart from making a bald statement in paragraph 6 of the petition, no details have been cited regarding any Work Charged employees being given the benefit of pension.

17. In any case, this Court in the order relied upon by the petitioner had only made an observation that the Department may consider the case of the petitioner and there was no Mandamus as such.

18. In view of the aforesaid facts and circumstances, this Court is of the opinion that no relief can be granted to the petitioner in the instant case and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant